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OFFICE OF PETITIONS

In re Application of
Thaddeus Schroeder et al
Application No. 10/603,462
Filed: June 25, 2003
Attorney Docket No. DP-306034

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)

:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 10/356,347, filed January 31, 2003, as set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

The amendment seeks a claim for priority under 35 U.S.C. § 120 to prior-filed Application No. 10/356,347. However, there is no common inventor between the instant application and Application No. 10/356,347. The statute requires that an application claiming benefit of the earlier filing date under 35 U.S.C. § 120 be filed by an inventor or inventors named in the previously filed application. An inventor search of Office records indicates that petitioner may be seeking to claim priority to Application No. 10/356,457, as this application was filed on January 31, 2003 and has an inventor in common with the present application.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) (no additional fee required) and a substitute amendment (complying with 37 CFR 1.121) setting forth the correct application number must be submitted.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

Frances Hicks
Frances Hicks

Petitions Examiner
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